

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LEONARD C. HOWARD,

Case No. 3:-07-CV-381

Plaintiff,

-vs-

Judge Thomas M. Rose

JUDGE WILLIAM MacMILLAN, et al.,

Chief Magistrate Judge Michael R. Merz

Defendants.

ENTRY AND ORDER OVERRULING HOWARD'S OBJECTIONS (Doc. #5) TO THE CHIEF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #3) REGARDING HOWARD'S COMPLAINT; ADOPTING THE CHIEF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS DISMISSING HOWARD'S COMPLAINT WITHOUT PREJUDICE

This matter is before the Court pursuant to pro se Plaintiff Leonard C. Howard's ("Howard's") objections to the Report and Recommendations (doc. #3) regarding Howard's Complaint. Howard is a prisoner and the Chief Magistrate Judge reviewed Howard's Complaint, as required by the law, prior to issue of process.

Howard's Complaint did not state a basis for this Court having subject matter jurisdiction over his claims and the Chief Magistrate Judge assumed that Howard seeks to invoke this Court's habeas corpus jurisdiction. The Chief Magistrate Judge then determined that Howard's Complaint, when treated as a petition for a writ of habeas corpus, was deficient for several reasons indicated in the Report and Recommendations. The Chief Magistrate Judge recommends that Howard's Complaint be dismissed without prejudice to its being refiled as a habeas corpus petition, assuming such filing would be timely.

The Chief Magistrate Judge then addressed jurisdiction over the compensatory damages portion of Howard's Complaint. Based upon this review, the Chief Magistrate Judge recommends that Howard's compensatory damages claims be dismissed with prejudice for several reasons indicated in the Report and Recommendations.

The District Judge has made a de novo review of the record on this matter pursuant to 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b). Upon consideration of the foregoing, the Court finds that Howard's objections are not well-taken and they are hereby OVERRULED. The Chief Magistrate Judge's Report and Recommendations regarding Howard's Complaint is ADOPTED in its entirety. Howard's release-from-custody claim is DISMISSED WITHOUT PREJUDICE. Howard's compensatory damages claims are DISMISSED WITH PREJUDICE.

The Clerk shall not issue process in this case without further order of the Court. Finally, the Clerk is ordered to provide a copy of this Entry and Order to Mr. Howard at his address of record.

DONE and **ORDERED** in Dayton, Ohio, this Twelfth day of November, 2007.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

The Honorable William MacMillan
The Honorable Mary Donovan
Kenneth Pohlman, Esq.
Mark Zugelder, Esq.
Leonard C. Howard